

# HOUSE BILL REPORT

## ESHB 2094

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**As Passed House:**

March 17, 1999

**Title:** An act relating to water rights claims.

**Brief Description:** Modifying the reopening of a filing period for water rights claims.

**Sponsors:** By House Committee on Agriculture & Ecology (Originally sponsored by Representatives G. Chandler and Linville).

**Brief History:**

**Committee Activity:**

Agriculture and Ecology: 2/25/99, 3/2/99 [DPS].

**Floor Activity:**

Passed House: 3/17/99, 98-0.

**Brief Summary of Engrossed Substitute Bill**

- Requires DOE to file claims submitted during a recent filing period in the state's registry of claims under certain circumstances.

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### HOUSE COMMITTEE ON AGRICULTURE AND ECOLOGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Koster, Republican Vice Chair; Anderson; B. Chandler; Delvin; Fortunato; Grant; Reardon; Schoesler; Stensen; Sump and Wood.

**Staff:** Kenneth Hirst (786-7105).

**Background:**

Code and Pre-Code Rights. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water are established under a permit system except for certain uses of groundwater not exceeding 5,000 gallons/day. Prior to the enactment of the 1917 and 1945 codes, rights to water were obtained in a variety

of ways and under a variety of water doctrines. The surface water code expressly acknowledges the validity of water rights established prior to its enactment. The use of public groundwater under the 1945 act is subject to existing rights.

Registration Required; Filing Periods. With the enactment of legislation in 1967, the state required persons with claims of historical rights to the use of water that predated the surface or groundwater code to register the claims with the Department of Ecology (DOE). In general, claims had to be filed by June 30, 1974. However, the filing period was reopened on a limited basis in 1979 and again in 1985. A person who failed to file a statement of claim as required is to be deemed to have waived and relinquished the right.

In 1997 legislation was enacted that established a new period for filing such claims. The new filing period began September 1, 1997, and ended June 30, 1998. Exempted from this filing period were rights being adjudicated in a general adjudication proceeding for water rights or regulated by groundwater acreage expansion rules. The right for a claim filed during this period is subordinate to rights embodied in water right permits or certificates issued before the claim was filed and subordinate to rights for claims filed in previous filing periods.

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### **Summary of Bill:**

If a person submitted a water right claim form to the DOE during the latest filing period and the claim was rejected by the DOE for being incomplete, the person may, under certain circumstances, submit additional information in support of the claim between July 1, 1999, and December 31, 1999. The circumstances that must be satisfied are: the person checked the box labeled "other" on the water right claim form regarding the legal doctrine under which the water right is claimed; and the premise of the claim for a groundwater right is that a right to ground water was inherent in and appurtenant to the original land patent issued by the federal government at the time the person's land was severed from federal ownership. However, this premise need not have been asserted in the claim.

If these circumstances are met, the person may submit to the DOE a statement that the groundwater right claim is based on this assertion for lands they now own or occupy. Such a claimant must also submit a bona fide copy of the original land patent document issued by the United States. If this is done, the water right claim is deemed sufficient in lieu of compliance with other procedures and must be accepted for filing in the water rights claims registry.

This authority does not apply to other claims rejected as ineligible for being incomplete, for failure to remit a filing fee, or for submitting a claim for a purpose that is exempt from the filing requirement.

Accepting such a claim for the registry confers no special status to or recognition of the claim.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** (Original bill) If a statement of claim was filed as required, it should be filed by the department in the state's registry.

**Testimony Against:** (Original bill) (1) The bill is too broad. It requires all claims filed to be treated the same, whether rejected or not. This is inequitable and may present equal protection problems. (2) The bill should be applied only to rejections based on uncertainties regarding the claims. (3) The stay on enforcement provided by the bill should be lifted.

**Testified:** (In support) Mary Burke.

(Opposed, original bill) Ken Slattery, Department of Ecology; and Dawn Vyvyan, Yakama Indian Nation.